IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 14717 of 2004

Between:

1 T.M. Leela Bai, W/o Gangaiah,
2 Nasani Kamala Bai, W/o Gangaiah,
Both R/o Balampur village, Utnoor Mandal, Adilabad District.

.... PETITIONERS

AND

1 Commissioner, Appeals O/o Chief Commissioner of Land

Administration, Andhra Pradesh, Hyderabad.
2 The Joint Collector, Adilabad.
3 The Mandal Revenue Officer, Utnoor Mandal at Utnoor,

Adilabad District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ in the nature of Writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring and setting aside the Order dt. 26-4-2004 in Commissioner Appeal's Proceedings No. BCW.4/760/99 on the file of the first respondent and the Order dt. 23-12-1988 passed in Procgs.No. B1/11248/88 on the file of the 2nd Respondent as illegal, arbitrary and without jurisdiction; Award costs and pass such other order or further orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.K.RAGHUVEER REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

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ORDER:

To a show cause notice, dated 9.11.1998 issued by the Joint Collector, Adilabad to the first petitioner, as to why assignment of Ac.10.18 gts. in Sy.No.12/8 and Ac.3-26 gts. in Sy.No.12/9 of Balampur village made in her favour should not be cancelled for (i) her not being a tribal, entitled to assignment of law (ii) her being a Government servant working as Nurse in Government Civil Hospital and her husband working as Forest Guard and (iii) her not cultivating the said land assigned to her, she sent a reply *inter alia* alleging that she is not an assignee from the Government and that she purchased the said land under registered sale deeds in 1965 from a private person Md.Khan. But by his order dated 23.12.1998 the Joint Collector cancelled the patta in favour of the petitioner. Questioning the said order petitioner filed writ petition No. 19103 of 1988, which was disposed of on 20.12.1998 with a direction to pursue remedy of appeal open to her and accordingly, petitioner preferred an appeal before the first respondent questioning the order of the Joint Collector. By the order impugned in this writ petition, first respondent dismissed the appeal on the ground petitioner purchased the land assigned to Mohammed Khan in violation of Section 3 of A.P. Assigned Lands (Prohibition of Transfer) Act, 1977, (Act 9 of 1977). Hence, this writ petition.

2. The contention of the learned counsel for the petitioner is since the order impugned in this petition is passed on grounds not mentioned in the show cause notice or in the order of the Joint Collector, the same is liable to be set aside, more so because the show cause notice was issued under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F (the Act) and since a Division Bench of this Court in **Smt.P.Mangamma Vs. Women's Cooperative Housing Society Ltd**. held that the power under Section 166-B of the Act can be exercised

within a reasonable period, having regard to the facts and circumstances of each case. The contention of the learned Government Pleader is that since petitioner in violation of the provisions of Act 9 of 1977, purchased assigned land from Md. Khan, first respondent canceling the patta issued in favour of the petitioner is unassailable.

3. Though the Joint Collector issued the show cause notice to the petitioner on ground that she is not entitled to assignment for her being a non tribal and a government servant and the wife of a government servant and her not being in possession of the assigned land first respondent cancelled the patta on the ground that she purchased the land in violation of the provisions of Act 9 of 1977.

4. If the respondents 1 to 3 wanted to invoke the provisions of Act 9 of 1977 for canceling sale deed in favour of the petitioner executed by Md.Khan on the ground that Md.Khan sold the assigned land to her, they ought to have followed the procedure prescribed by Act 9 of 1977 and the Rules made thereunder. Having issued a show cause notice under Section 166-B of the Act, and without following the procedure prescribed by Act 9 of 1977, petitioner cannot be deprived of her land by taking recourse to Section 3 of Act 9 of 1977. Since petitioner is sought to be deprived of her land by taking recourse to Act 9 of 1977 without following the procedure prescribed therein, the order impugned is liable to be and hence is set aisde.

5. Hence, the writ petition is allowed and the order impugned is set aside. If respondents feel that petitioner is in possession of the land in violation of any law in force, they are entitled to recover possession thereof by taking recourse to due process of law and by following the procedure prescribed. No costs.

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C.Y.SOMAYAJULU, J

Dated: 10.03.2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the 10th day of March Two thousand and Five.

ASSISTANT REGISTRAR

To

1 Commissioner, Appeals O/o Chief Commissioner of Land

Administration, Andhra Pradesh, Hyderabad.
2 The Joint Collector, Adilabad.
3 The Mandal Revenue Officer, Utnoor Mandal at Utnoor,

Adilabad District.

4 2 CCs to G.P for Revenue, High Court Bldgs, Hyd. (OUT)

5 2 CD copies.

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